

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2010 Legislative Session

Legislative Day No. 2

Bill No. 4 -2010

Introduced by: The Chairperson at the request of the County Executive

AN ACT authorizing Howard County to enter into Development Rights and Responsibilities Agreements pursuant to the authority granted by Article 66B, Section 13.01 of the Annotated Code of Maryland; establishing procedures and requirements for the consideration and execution of such agreements; making certain provisions regarding petitions filed prior to the effective date of this Act; and generally related to Development Rights and Responsibilities Agreements.

Introduced and read first time _____, 2010. Ordered posted and hearing scheduled.

By order _____
Stephen Le Gendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2010.

By order _____
Stephen LeGendre, Administrator

This Bill was read the third time on _____, 2010 and Passed ____, Passed with amendments ____, Failed ____.

By order _____
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2010 at ____ a.m./p.m.

By order _____
Stephen LeGendre, Administrator

Approved/Vetoed by the County Executive _____, 2010

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 *Section 1. Be It Enacted by the County Council of Howard County, Maryland, that new*
2 *Subtitle 17 “Development Rights and Responsibilities Agreements” is added to Title 16*
3 *“Planning, Zoning and Subdivisions and Land Development Regulations” of the Howard*
4 *County Code to read as follows:*

6 **Title 16. Planning, Zoning and Subdivisions and Land Development Regulations.**

7 **SUBTITLE 17. DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS.**

9 **SECTION 16.1700. PURPOSE.**

10 THE PURPOSE OF THIS SUBTITLE IS TO PROTECT THE PUBLIC HEALTH, SAFETY, AND
11 WELFARE BY ENACTING THE AUTHORITY GRANTED BY SECTION 13.01 OF ARTICLE 66B OF
12 THE ANNOTATED CODE OF MARYLAND RELATING TO DEVELOPMENT RIGHTS AND
13 RESPONSIBILITIES AGREEMENTS AND ESTABLISHING PROCEDURES FOR SUCH AGREEMENTS
14 IN ACCORDANCE WITH THE PROVISIONS OF THE STATE CODE.

16 **SECTION 16.1701. DEFINITIONS.**

17 IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

18 (A) *AGREEMENT* MEANS A DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT.

19 (B) *DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT* MEANS AN AGREEMENT
20 BETWEEN A ~~GOVERNMENT~~ GOVERNMENTAL BODY OF A JURISDICTION AND A PERSON OR
21 LEGAL ENTITY HAVING A LEGAL OR EQUITABLE INTEREST IN REAL PROPERTY FOR THE
22 PURPOSE OF ESTABLISHING CONDITIONS UNDER WHICH DEVELOPMENT MAY PROCEED FOR A
23 SPECIFIED TIME.

24 (C) *DEVELOPMENT* MEANS DEVELOPMENT AS DEFINED IN THE HOWARD COUNTY
25 SUBDIVISION AND LAND DEVELOPMENT REGULATIONS.

26 (D) *PARTIES* MEANS THE COUNTY EXECUTIVE ON BEHALF OF THE COUNTY AND THE
27 PETITIONER.

28 ~~(E)~~ (E) *PETITIONER* MEANS A PERSON OR LEGAL ENTITY HAVING A LEGAL OR EQUITABLE
29 INTEREST IN REAL PROPERTY SUBJECT TO THE AGREEMENT, OR THE PERSON’S
30 REPRESENTATIVE OR SUCCESSORS IN INTEREST.

31 ~~(F)~~ (F) *PLAN* MEANS A GENERAL PLAN OR MASTER PLAN AS DEFINED IN THE STATE CODE.

1 ~~(E)~~ (G) *PLANNING BOARD* MEANS THE HOWARD COUNTY PLANNING BOARD.

2 ~~(F)~~ (H) *STATE CODE* MEANS ARTICLE 66B SECTION 13.01 OF THE ANNOTATED CODE OF
3 MARYLAND.

4 (I) *SUCCESSORS IN INTEREST* MEANS, INCLUDING BUT NOT LIMITED TO, A PERSON'S OR LEGAL
5 ENTITY'S AFFILIATES, ALL SUCCESSOR OWNERS OR ASSIGNS, AND ALL PURCHASERS OF
6 EQUITY INTERESTS OR ASSETS.

7
8 **SECTION 16.1702. APPLICABILITY.**

9 ANY PETITIONER MAY PETITION THE COUNTY EXECUTIVE ~~AND COUNTY COUNCIL~~ TO ENTER
10 INTO AN AGREEMENT. THE COUNTY EXECUTIVE SHALL EXERCISE THE AUTHORITY OF THE
11 PUBLIC PRINCIPAL GRANTED BY THE STATE CODE TO NEGOTIATE, EXECUTE AND ENFORCE
12 AGREEMENTS, EXCEPT THAT THE COUNTY COUNCIL SHALL ACT AS THE PUBLIC PRINCIPAL
13 FOR PURPOSES OF CONDUCTING THE PUBLIC HEARING ON A PROPOSED AGREEMENT AND
14 EITHER APPROVING OR REJECTING AN AGREEMENT OR AN AMENDMENT TO AN EXECUTED
15 AGREEMENT. IN THE SUSPENSION OR TERMINATION OF EXECUTED AGREEMENTS THE
16 COUNTY EXECUTIVE AND COUNTY COUNCIL SHALL ACT TOGETHER AS THE PUBLIC
17 PRINCIPAL UNDER STATE CODE AUTHORITY AS PROVIDED HEREIN.

18
19 **SECTION 16.1703. CONTENTS OF DEVELOPMENT RIGHTS AND RESPONSIBILITIES**
20 **AGREEMENTS.**

21 (A) AN AGREEMENT SHALL INCLUDE:

- 22 (1) A LEGAL DESCRIPTION OF THE REAL PROPERTY SUBJECT TO THE
23 AGREEMENT;
24 (2) THE NAMES OF THE PERSONS HAVING A LEGAL OR EQUITABLE INTEREST IN
25 THE REAL PROPERTY SUBJECT TO THE AGREEMENT;
26 (3) THE DURATION OF THE AGREEMENT;
27 (4) THE PERMISSIBLE USES OF THE REAL PROPERTY;
28 (5) THE DENSITY OR INTENSITY OF THE USE OF THE REAL PROPERTY;
29 (6) THE MAXIMUM HEIGHT AND SIZE OF STRUCTURES TO BE LOCATED ON THE
30 REAL PROPERTY;

- 1 (7) A DESCRIPTION OF THE PERMITS REQUIRED OR ALREADY APPROVED FOR THE
2 DEVELOPMENT OF THE REAL PROPERTY;
- 3 (8) A STATEMENT THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE
4 PLAN AND DEVELOPMENT REGULATIONS OF HOWARD COUNTY;
- 5 (9) A DESCRIPTION OF THE CONDITIONS, TERMS, RESTRICTIONS, OR OTHER
6 REQUIREMENTS DETERMINED BY THE GOVERNING BODY OF HOWARD
7 COUNTY TO BE NECESSARY TO ENSURE THE PUBLIC HEALTH, SAFETY, OR
8 WELFARE; AND
- 9 (10) TO THE EXTENT APPLICABLE, PROVISIONS FOR THE:
- 10 (I) DEDICATION OF A PORTION OF THE REAL PROPERTY FOR PUBLIC USE;
- 11 (II) PROTECTION OF SENSITIVE AREAS;
- 12 (III) PRESERVATION AND RESTORATION OF HISTORIC STRUCTURES; AND
- 13 (IV) CONSTRUCTION OR FINANCING OF PUBLIC FACILITIES.
- 14 (B) AN AGREEMENT MAY:
- 15 (1) FIX THE TIME FRAME AND TERMS FOR DEVELOPMENT AND CONSTRUCTION
- 16 ON THE REAL PROPERTY; AND
- 17 (2) PROVIDE FOR OTHER MATTERS CONSISTENT WITH THIS SUBTITLE.
- 18

19 **SECTION 16.1704. PROCEDURES.**

20 ~~(A) BEFORE ENTERING AN AGREEMENT, THE PETITIONER SHALL PETITION THE COUNTY~~
21 ~~EXECUTIVE AND COUNTY COUNCIL TO ENTER INTO THE AGREEMENT.~~

22 (A) THE PETITIONER SHALL PETITION THE COUNTY EXECUTIVE TO NEGOTIATE AND
23 EXECUTE AN AGREEMENT. THE PETITION SHALL INCLUDE KEY ELEMENTS OF THE PROPOSED
24 AGREEMENT. WITHIN 10 DAYS OF SUBMITTING A PETITION TO THE COUNTY EXECUTIVE
25 THE PETITIONER SHALL PROVIDE A COPY OF THE PETITION TO THE COUNTY COUNCIL. THE
26 COUNTY EXECUTIVE SHALL FIRST REVIEW THE PETITION TO DETERMINE WHETHER TO
27 ACCEPT THE PETITION AND INITIATE THE NEGOTIATION PROCESS.

28 (B) AN AGREEMENT MAY BE EXECUTED BY THE COUNTY EXECUTIVE ONLY AFTER:

- 29 (1) A PRE-SUBMISSION COMMUNITY MEETING CONDUCTED USING THE SAME
30 PROCEDURES ESTABLISHED IN SECTION 16.128(B) – (G) OF THE SUBDIVISION
31 AND LAND DEVELOPMENT REGULATIONS, UNLESS WITHIN ONE YEAR OF THE

1 SCHEDULED MEETING A PRE-SUBMISSION COMMUNITY MEETING HAS
2 ALREADY BEEN HELD FOR THE SAME DEVELOPMENT PROJECT THAT IS ALL
3 OR PART OF THE PROPERTY THAT IS THE SUBJECT OF THE PROPOSED
4 AGREEMENT;

5 ~~(1)~~(2) A PUBLIC MEETING BEFORE THE PLANNING BOARD AND A
6 ~~RECOMMENDATION~~ AN ADVISORY DETERMINATION BY THE PLANNING
7 BOARD THAT THE PROPOSED AGREEMENT IS CONSISTENT WITH THE PLAN;
8 AND

9 ~~(2)~~(3) A PUBLIC HEARING BEFORE THE COUNTY COUNCIL AND APPROVAL OF A
10 RESOLUTION AUTHORIZING THE EXECUTION OF THE AGREEMENT.

11 ~~(c) EXCEPT FOR A TERMINATION UNDER SECTION 16.1706(A) OF THIS SUBTITLE, WHEN THIS~~
12 ~~SUBTITLE REQUIRES AN ACTION BY THE COUNTY COUNCIL AND THE COUNTY EXECUTIVE,~~
13 ~~THE APPROVAL OF THE COUNTY COUNCIL, OR THE CONSENT OF THE PARTIES, THE ACTION~~
14 ~~OR THE COUNTY'S CONSENT SHALL BE EXPRESSED THROUGH COUNCIL APPROVAL OF A~~
15 ~~RESOLUTION RECOMMENDED BY THE COUNTY EXECUTIVE.~~

16 (C) THE COUNTY COUNCIL MAY APPROVE OR REJECT THE PROPOSED AGREEMENT OR MAY
17 ENCOURAGE THE PARTIES TO SUBMIT A REVISED VERSION.

18
19 **SECTION 16.1705. AMENDMENTS OF AGREEMENTS. TO EXECUTED AGREEMENTS.**

20 ~~(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION AND AFTER A PUBLIC HEARING, THE~~
21 ~~PARTIES TO AN AGREEMENT MAY AMEND THE AGREEMENT BY MUTUAL CONSENT.~~

22 ~~(B) UNLESS THE PLANNING BOARD DETERMINES THAT THE PROPOSED AMENDMENT TO THE~~
23 ~~AGREEMENT IS CONSISTENT WITH THE PLAN, THE PARTIES MAY NOT AMEND THE~~
24 ~~AGREEMENT. AMENDMENTS TO EXECUTED AGREEMENTS SHALL BE GOVERNED BY THE~~
25 SAME PROCEDURES AS PROVIDED IN SECTION 16.1704 FOR THE CONSIDERATION OF INITIAL
26 AGREEMENTS.

27
28 **SECTION 16.1706. TERMINATION OF AGREEMENTS; SUSPENSION; TIME LIMITATIONS.**

29 (A) THE PARTIES TO AN AGREEMENT MAY TERMINATE THE AGREEMENT BY MUTUAL
30 ~~CONSENT.~~ CONSENT, PROVIDED THE COUNTY'S CONSENT SHALL BE EXPRESSED BY A
31 RESOLUTION OF THE COUNTY COUNCIL RECOMMENDED BY THE COUNTY EXECUTIVE.

1 (B) IF THE COUNTY EXECUTIVE ~~AND THE COUNTY COUNCIL DETERMINE~~ RECOMMENDS
2 AND THE COUNTY COUNCIL DETERMINES BY RESOLUTION THAT SUSPENSION OR
3 TERMINATION IS ESSENTIAL TO ENSURE THE PUBLIC HEALTH, SAFETY, OR WELFARE, THE
4 COUNTY ~~EXECUTIVE AND COUNTY COUNCIL~~ MAY SUSPEND OR TERMINATE AN
5 AGREEMENT AFTER A PUBLIC HEARING.

6 (C) AN AGREEMENT SHALL BE VOID 5 YEARS AFTER THE DAY ON WHICH THE PARTIES
7 EXECUTE THE AGREEMENT UNLESS THE DURATION OF THE AGREEMENT IS:

8 (1) OTHERWISE ESTABLISHED IN THE AGREEMENT; OR

9 (2) EXTENDED BY AMENDMENT UNDER SECTION 16.1705 OF THIS SUBTITLE.

10
11 **SECTION 16.1707. APPLICABLE LAWS, REGULATIONS, AND POLICIES.**

12 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE LAWS, RULES,
13 REGULATIONS, AND POLICIES GOVERNING THE USE, DENSITY, OR INTENSITY OF THE REAL
14 PROPERTY SUBJECT TO THE AGREEMENT SHALL BE THE LAWS, RULES, REGULATIONS, AND
15 POLICIES IN FORCE AT THE TIME THE PARTIES EXECUTE THE AGREEMENT.

16 (B) IF THE COUNTY ~~EXECUTIVE AND THE COUNTY COUNCIL DETERMINE~~ DETERMINES THAT
17 COMPLIANCE WITH LAWS, RULES, REGULATIONS, AND POLICIES ENACTED OR ADOPTED
18 AFTER THE EFFECTIVE DATE OF THE AGREEMENT IS ESSENTIAL TO ENSURE THE HEALTH,
19 SAFETY, OR WELFARE OF RESIDENTS OF ALL OR PART OF THE COUNTY, AN AGREEMENT
20 MAY NOT PREVENT HOWARD COUNTY FROM REQUIRING A PERSON TO COMPLY WITH THOSE
21 LAWS, RULES, REGULATIONS, OR POLICIES.

22
23 **SECTION 16.1708. RECORDING.**

24 (A) THE PETITIONER SHALL RECORD AN AGREEMENT IN THE LAND RECORDS OF HOWARD
25 COUNTY WITHIN 20 DAYS AFTER THE DAY ON WHICH THE PARTIES EXECUTED THE
26 AGREEMENT AND AN AGREEMENT THAT IS NOT RECORDED WITHIN 20 DAYS IS VOID.

27 (B) THE PARTIES TO THE AGREEMENT AND THEIR SUCCESSORS IN INTEREST ARE BOUND TO
28 THE AGREEMENT AFTER THE AGREEMENT IS RECORDED.

29
30 **SECTION 16.1709. ENFORCEMENT BY INTERESTED PARTIES.**

1 UNLESS THE AGREEMENT IS TERMINATED UNDER SECTION 16.1706 OF THIS SUBTITLE, THE
2 PARTIES TO AN AGREEMENT OR THEIR SUCCESSORS IN INTEREST MAY ENFORCE THE
3 AGREEMENT.

4
5 **Section 2. And Be It Further Enacted** by the County Council of Howard County,
6 Maryland, that a petition for approval of a Development Rights and Responsibilities
7 Agreement filed on or after ~~February 1, 2010~~ the date of enactment of this Act, but before
8 the effective date of this Act:

9 A. May be considered and processed by the County, including the Planning Board,
10 in accordance with the provisions of this Act before the effective date of this Act;
11 and

12 B. Shall not be approved by the County Council before the effective date of this ~~Act;~~
13 ~~and Act.~~

14 ~~C. Any public meeting held and recommendation made by the Planning Board~~
15 ~~before the effective date of this Act is hereby ratified and validated upon the~~
16 ~~effective date of this Act.~~

17
18 **Section 3. And Be It Further Enacted** by the County Council of Howard County,
19 Maryland, that this Act shall become effective 61 days after its enactment.